

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JASON C. MARTINEZ,

Plaintiff,

v.

No. 17-CV-00606-JCH-WPL

GUADALUPE COUNTY CORRECTIONAL
FACILITY, *et al.*,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff Jason C. Martinez's response to the Court's June 23, 2017 Order Granting Leave To Proceed Pursuant to 28 U.S.C. § 1915(b) And To Make Payments Or Show Cause. [Doc. 8] On June 23, 2017, the Court granted Plaintiff's Application To Proceed In District Court Without Prepaying Fees or Costs and ordered Plaintiff to pay an initial partial payment in the amount of \$48.24 pursuant to 28 U.S.C. § 1915(b)(1)(B). [Doc. 6] The amount of the initial partial payment was based on the average monthly balance in Plaintiff's inmate account for the six-month period between January and June 2017. [See Doc. 4] On July 5, 2017, Plaintiff filed the present response, objecting to the amount of the initial partial payment because the balance in Plaintiff's inmate account was inflated by a one-time payment in the amount of \$500.00, which Plaintiff contends was a donation "to help pay for a family member's funeral." [Doc. 8 at 1] Plaintiff states that his "money's been depleted," but he "can pay \$15.00 dollars guaranteed every month starting 7-25-17." [Doc. 8 at 1]

In light of Plaintiff's depleted financial condition [see Doc. 4], the Court will sustain Plaintiff's objection to the amount of the initial partial payment. Plaintiff has represented to the

Court that he has sufficient funds to submit an initial partial payment in the amount of \$15.00 and therefore, the amount of the initial partial payment will be changed from \$48.24 to \$15.00. *See* 28 U.S.C. § 1915(b)(1) (providing that the Court shall collect an initial partial payment “when funds exist”). The initial partial payment must be submitted to the Clerk of the Court within thirty (30) days of the date of entry of this order. Failure timely to submit the initial partial payment, or show cause why the payment should be excused, may result in the dismissal of Plaintiff’s Prisoner’s Civil Rights Complaint without prejudice without further notice.

Plaintiff is reminded that the Court will not review the merits of his Prisoner’s Civil Rights Complaint unless the initial partial payment is paid or excused. Plaintiff also is reminded that, after payment of the initial partial fee, he must continue to make monthly payments of twenty (20) percent of the preceding month’s income credited to his account until the filing fee is paid in full. *See* § 1915(b).

IT IS THEREFORE ORDERED that Plaintiff’s objection to the amount of the initial partial payment is SUSTAINED; and the amount of the initial partial payment is changed from \$48.24 to \$15.00;

IT IS FURTHER ORDERED that, within thirty (30) days from entry of this order, Plaintiff shall send to the Clerk of the Court an initial partial payment of \$15.00 or show cause why the payment should be excused.


UNITED STATES MAGISTRATE JUDGE